IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT

JODHPUR.

O R D E R

Dal Chand Paliwal. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 6376/2006

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Date of Order: March 22, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. S.P. Sharma, for the petitioner.
Mr. Rameshwar Dave, Deputy Govt. Advocate.

BY THE COURT:

Petitioner has filed this writ petition under Article 226 of the Constitution of India challenging the order Annx.7 dated 3-7-1992, whereby he was dismissed from service.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that on 5-1-1984, the petitioner, while holding the post of Assistant Sub-Inspector of Police, was found involved in a criminal case for the offences under Sections 5 (1) (d) (2) of the Prevention of Corruption Act, 1988 (for short, "the P.C. Act" hereinafter) and Section 161 IPC. He was put to trial in Criminal

Case No. 1/1985 before the Special Judge, Anti-Corruption Cases Court, Udaipur (for short, "the trial Court" hereinafter). On trial, the trial Court, vide judgment and order dated 13-11-1987, convicted the petitioner for the offence under Section 161 IPC and sentenced to six months simple imprisonment with a fine of Rs.500/-, in default of payment of fine further to undergo three months simple imprisonment. He was also convicted for the offence under Section 5 (1) (d) (2) of the P.C. Act, and sentenced to six months simple imprisonment and a fine of Rs.500/-, in default of payment of fine further to undergo three months simple imprisonment. Aggrieved with the impugned judgment and order dated 13-11-1987 passed by the trial Court, the petitioner preferred an appeal before this Court being S.B. Criminal Appeal No. 475/1987, which came to be allowed vide judgment dated 26-3-2006 and this Court, while setting aside the conviction and sentence imposed on the petitioner by the trial Court vide judgment and order dated 13-11-1987, set the petitioner at liberty. Against the judgment and order of acquittal dated 26-3-2006 passed by this Court, a Special Leave to Appeal (Cri.) 2006 CRLMP No. 15039 was filed by the State of Rajasthan, which came to be dismissed by the Hon'ble Supreme Court vide Order dated 8-1-2007 and, thus, the order of acquittal of the petitioner passed by this Court has attained finality.

Learned counsel for the petitioner submits that since the very basis of dismissal of petitioner's service vide order Annx.7 dated 3-7-1992 has come to an end on account of acquittal of the petitioner by this Court vide judgment and order dated 26-3-2006 and the Special Leave to Appeal against this order has been dismissed by the Hon'ble Supreme Court vide Order dated 8-1-2007, therefore, the impugned order Annx.7 dated 3-7-1992 is liable to be quashed. In support of his contention, learned counsel for the petitioner has placed reliance on a decision of the Hon'ble Supreme Court in G.M. Tank Vs. State of Gujarat & ors., 2006 CDR 396 (SC), and the decisions of this Court in Purshottam Singh Vs. The Union of India, 1080 RLW 376; Satya Dev Sharma Vs. State of Rajasthan, 1994 (1) 496; Nasruddin Vs. State of Rajasthan & ors., 2006(2) CDR 1350 (Raj.); and Man Singh Vs. State of Rajasthan & ors., 1998 (1) WLC (Raj.) 445.

In Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., (1999) 3 SCC 679, the question before the Hon'ble Supreme Court was as to whether the departmental proceedings and the proceedings in a criminal case launched on the basis of the same set of fact can be continued simultaneous. The Hon'ble Supreme Court, in para 34 of its decision, held as under:-

> "There is yet another reason for discarding the whole case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom." The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witness, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the inquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings so stand."

In G.M. Tank Vs. State of Gujarat & ors. (supra), the appellant challenged his dismissal on the ground of his acquittal in the criminal case and the Hon'ble Supreme Court held as under:-

> "In our opinion, such facts and evidence in the departmental as well as in criminal proceedings were the same without there being any iota of evidence, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts

> below, when there was an honourable acquittal of the employee during pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

In Satya Dev Sharma Vs. State of Rajasthan & ors. (supra), the services of the petitioner were terminated on the ground of his conviction. Later on, on an appeal, the Appellate Court acquitted the petitioner. This Court, held that since the Appellate Court has acquitted the petitioner and set aside the conviction, there is no conviction on the basis of which the Disciplinary Authority can impose any punishment on him.

In Purshottam Singh Vs. The Union of India (supra) and in Man Singh Vs. State of Rajasthan & ors. (supra), on the basis of conviction of the petitioners therein, their services were terminated, however, on filing appeals, the Appellate Courts acquitted the petitioners therein. This Court, setting aside the order of termination, held that the petitioners therein are entitled for reinstatement with all consequential benefits.

Keeping in view the decisions of the Hon'ble Supreme Court and this Court, since the petitioner herein has been acquitted by this Court and his acquittal was affirmed by the Hon'ble Supreme Court, in my view, the petitioner is entitled for reinstatement with all consequential benefits.

In the result, the writ petition is allowed. The order

Annx.7 dated 3-7-1992 is quashed and the respondents are directed to reinstate the petitioner in service with all the consequential benefits. There shall be no order as to costs.

(H.R. PANWAR), J.

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